



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO

**CARROLL'S FOODS, LLC
d/b/a MURPHY-BROWN, LLC
VPA01074, VPA00576, VPA00578**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Carroll's Foods, LLC, d/b/a Murphy-Brown, LLC for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "VPA" means Virginia Pollution Abatement. A VPA permit is a document issued by the Board, authorizing pollutant management activities under prescribed conditions pursuant to Virginia Administrative Code 9 VAC 25-32-10 *et seq.*

7. “Carroll’s Foods” means Carroll’s Foods, LLC, d/b/a Murphy-Brown, LLC and its affiliates, partners, subsidiaries, and parents. Carroll’s Foods is owned by Murphy-Brown Waverly Division, LLC.
8. “Farm No. 2” means the Carroll’s Foods owned confined feeding animal operation located off State Route 621, in Isle of Wight, County, Virginia which incorporates farms 1-5 and is permitted under VPA01074.
9. “Farm No.15” means the Carroll’s Foods owned confined feeding animal operation located off of State Route 605 in Sussex County, Virginia and permitted under VPA00576.
10. “Farm Nos.19 and 20” means the Carroll’s Foods owned confined feeding animal operation located off of State Route 625 in Sussex County, Virginia and permitted under VPA00578.
11. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
12. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
13. “Water Quality Standards” means provisions of state or federal law which consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the State Water Control Law and the federal Clean Water Act.

SECTION C: Findings of Fact and Conclusions of Law

1. Carroll’s Foods owns and operates a series of confined animal feeding operations in both Isle of Wight and Sussex Counties, Virginia. Farm No. 2 is operated under permit number VPA01074; Farm No. 15 is operated under permit number VPA00576; and Farms Nos. 19 and 20 are operated under permit number VPA00578. These Permits authorize the management, storage, and land application of animal waste and do not authorize discharges of animal waste and wastewaters to state waters.
2. Carroll’s Foods’ ISO14001 EMS requires that they have a spill response plan, and that they carry it out fully anytime a discharge occurs. In addition, in May 2005, Carroll’s Foods initiated their farm retrofit project in Virginia which includes a significant system upgrade, including the installation of additional measures to prevent these types of discharges from occurring in all of their farms in Virginia. The cost of this retrofit in Virginia is approximately three million dollars and the

upgrade has been completed on eight of their 16 Virginia farms. Completion of this project in all of the Virginia farms is scheduled to be completed no later than July 2006.

3. On January 3, 2005 DEQ conducted an inspection of Farm No.15 in Sussex County, Virginia. The inspection noted evidence of a discharge of approximately 12,000 gallons of animal waste which occurred and was reported to DEQ on December 30, 2004 by Carroll's Foods. Reportedly, animal waste discharged into German Swamp from a buried 4-inch hog waste recycle line when an elbow connector separated due to pressure on the recycle line. DEQ conducted ambient water quality monitoring of the receiving stream on January 3, 2005. Laboratory results of the monitoring indicate fecal coliform counts up to 1300 per 100 ml of water. The water quality standard for fecal coliform is found at 9 VAC 25-260-170.
4. On January 10, 2005 DEQ conducted an inspection of Farm No.20 in Sussex County, Virginia. The inspection noted evidence of a discharge of approximately 10,000 gallons of animal waste which occurred on January 10, 2005, as was reported on January 10, 2005 by Carroll's Foods. The discharge reached an unnamed tributary of Spring Branch and was reported as being due to a blockage in the discharge line from building # 7 as a result of a mechanical failure with the PLC float. DEQ conducted ambient water quality monitoring of the receiving stream on January 10, 2005. Laboratory results of the monitoring indicate fecal coliform counts up to 16,000 per 100 ml of water. The water quality standard for fecal coliform is found at 9 VAC 25-260-170.
5. On March 22, 2005, DEQ conducted an inspection of Farm No.19 in Sussex County, Virginia. The inspection noted evidence of a discharge of approximately 27,000 gallons of animal waste which occurred on March 21, 2005, as was reported on March 21, 2005 by Carroll's Foods. The discharge was caused when farm staff were cleaning the sludge out of an underhouse waste pit in one of the hog buildings and the sludge clogged the discharge line that conveys the waste from the hog buildings to the primary lagoon. DEQ conducted ambient water quality monitoring of the receiving stream on March 22, 2005. Laboratory results of the monitoring indicate fecal coliform counts up to 16,000 per 100 ml of water. The water quality standard for fecal coliform is found at 9 VAC 25-260-170. Laboratory results of the monitoring indicate ammonia nitrogen of 19.9 mg/l as N. The water quality standard for ammonia is found at 9 VAC 25-260-155.
6. On June 17, 2005, DEQ conducted an inspection of Farm No. 2 in Isle of Wight County, Virginia. The inspection was conducted in response to Carroll's Foods June 17, 2005 report of a June 16, 2005 discharge of approximately 12,000 gallons of animal waste. Reportedly, approximately 500 gallons of this discharge flowed into an unnamed tributary of the Blackwater River. The discharge was reported to be caused by the separation a clasp on the circulation hose from the wastewater treatment unit to the lagoon.

7. In each of the above unpermitted discharges, Carroll's Foods responded quickly and appropriately to clean up and remediate the discharges and notified the Department of these events within the appropriate times.
8. On July 12, 2005, DEQ and Carroll's Foods representatives met to discuss resolution of the above issues.
9. On July 14, 2005, DEQ issued the Carroll's Foods a Notice of Violation (05-07-PRO-203) advising them of the above facts and applicable regulatory and statutory citations.
10. On January 18, 2006, DEQ and Carroll's Foods representatives met to discuss resolution of the above issues and what has been done to come back into compliance since the issuance of the above Notice of Violation.
11. Carroll's Foods does not have a permit from the Board to discharge sewage, industrial waste, or other wastes to State waters.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Carroll's Foods, and Carroll's Foods agrees:

1. To remedy the alleged violations described above and bring the facilities into compliance, Carroll's Foods shall perform the actions described in Appendix A of this Order.
2. In settlement of the violations in this Order, the Board orders Carroll's Foods, and Carroll's Foods voluntarily agrees to pay a civil charge of \$39,000 (thirty nine thousand dollars). Of this amount, \$29,250 (twenty nine thousand two hundred fifty dollars) shall be offset by the completion of the Supplemental Environmental Project (SEP) set forth in Appendix B of this Order. Within 30 days of the effective date of this order, Carroll's Foods shall pay \$9,750 (nine thousand seven hundred fifty dollars) by check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Carroll's Foods shall record its Federal Tax Identification number on the check.

3. Carroll's Foods shall perform a Supplemental Environmental Project ("SEP") pursuant to Virginia Code § 10.1-1186.2, as detailed in Appendix B of this Order. The total cost of the SEP shall be at least \$29,250, and shall be completed by June 30, 2006. In the event

that the project detailed in Appendix B is later determined to be impossible to perform, or otherwise not available or feasible, Carroll's Foods shall upon written notice from the Department provide payment of \$29,250 within 30 days of notification to the "Treasurer of Virginia," as described in Paragraph D.2 above. In the event that Carroll's Foods publicizes its participation in this project, it will state in a prominent manner that the Project is being undertaken as part of the settlement of an enforcement action.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Carroll's Foods, for good cause shown by Carroll's Foods, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Carroll's Foods by DEQ on July 14, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Carroll's Foods admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Carroll's Foods consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Carroll's Foods declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Carroll's Foods to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Carroll's Foods shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Carroll's Foods shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Carroll's Foods shall notify the DEQ Piedmont Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the DEQ Piedmont Regional Office within 24 hours of learning of any condition above, which Carroll's Foods intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Carroll's Foods. Notwithstanding the foregoing, Carroll's Foods agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Carroll's Foods petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approve s the termination of the Order; or
 - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to Carroll's Foods.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Carroll's Foods from its obligation to comply with any statute,

regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Carroll's Foods voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16th day of March, 2006.

David K. Paylor (for)
David K. Paylor, Director
Department of Environmental Quality

Carroll's Foods voluntarily agrees to the issuance of this Order.

By: Mark A. Pahl

Date: 2-2-06

~~Commonwealth of Virginia~~ State of North Carolina

City/County of Duplin

The foregoing document was signed and acknowledged before me this 2nd day of

FEBRUARY, 2006, by MARK A. PAHL, who is
(name)

VP/GM of Carroll's Foods.
(title)

Jennifer M. Sumner
Notary Public

My commission expires: 9-1-09

APPENDIX A

Carroll's Foods shall:

1. By June 30, 2006, complete the farm retrofit project for Farms Nos. 2, 15, 19, and 20, as specified by their recycle retrofit plan initiated in May, 2005.
2. Provide DEQ written notification within 10 days of completion of when the retrofit of the above farms have been completed.
3. Submit reports required pursuant to Appendix A of this Order to:

Vernon Williams
Piedmont Regional Office
Department of Environmental Quality
4949-A Cox Road
Glen Allen, VA 23060

APPENDIX B

Carroll's Foods shall:

1. Conduct a Supplemental Environmental Project (SEP), pursuant to Virginia Code § 10.1-1186.2, by constructing storm water containment structures on Farm 3, Farm 15, and Farms 19 and 20. These storm water containment structures shall be sized to contain, and provide temporary retention, for runoff from the swine building and pad area for rain events of up to 1 inch. Storm water containment structures shall be designed, and their construction supervised, by staff engineers to insure proper sizing and function. These storm water containment structures shall be completed no later than July 1, 2006.
2. Provide DEQ written notification within 10 days of completion of when the construction of the storm water containment structures have been completed for the above farms.
3. All documents pertaining to this SEP shall be submitted to:

Vernon C. Williams
Enforcement Manager
Department of Environmental Quality
4949-A Cox Road
Glen Allen, Virginia 23060